THE BOMBAY AGRICULTURAL DEBTORS RELIEF ACT, 1947.

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BOMBAY ACT No. XXVIII OF 1947.[1]

[THE BOMBAY AGRICULTURAL DEBTORS RELIEF ACT, 1947.]

[*27th May 1947*]

Amended by Bom. 70 of 1948.
Adapted and modified by the Adaptation of Laws Order, 1950.
Amended by Bom. 37 of 1950.
" " " 41 of 1951.
" " " 19 of 1952.
" " " 18 of 1953.
" " " 22 of 1953.
" " " 37 of 1955.

An Act to consolidate and amend the law for the Relief of Agricultural Debtors in the Province of Bombay.

WHEREAS it is expedient to consolidate and amend the law for the relief of agricultural debtors in the Province of Bombay and for certain other purposes specified herein ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title and extent.

1. (*1*) This Act may be called the Bombay Agricultural Debtors Relief Act, 1947.

(*2*) It extends to the whole of the [2][State] of Bombay except the City of Bombay.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*1*) " award " means an award made under sub-section (*4*) of section 8 or section 9, 32, or 33 or as confirmed or modified by the Court in appeal ;

Bom. VII of 1925.

(*2*) " Co-operative society " means a society registered under the provisions of the Bombay Co-operative Societies Act, 1925 ;

(*3*) " Court " means the court of the Civil Judge (Senior Division), having ordinary jurisdiction in the area where the debtor ordinarily resides and if there is not such Civil Judge, the court of the Civil Judge (Junior Division), having such jurisdiction [3][and includes any court to which an application may be referred to for disposal under section 13A] ;

(*4*) " debt " means any liability in cash or kind, whether secured or unsecured due from a debtor whether payable under a decree or order of any civil court or otherwise [4][and includes mortgage money the payment of which is secured by the usufructuary mortgage of immoveable property] but does not include arrears of wages payable in respect of agricultural or manual labour ;

(*5*) " debtor " means—

(*a*) an individual—

(*i*) who is indebted ;

(*ii*) who holds land used for agricultural purposes or has held such land at any time not more than 30 years before the 30th January 1940, which has been transferred whether under an instrument or not and which transfer is in the nature of a mortgage although not purporting to be so ;

(*iii*) who has been cultivating land personally for the cultivating seasons in the two years immediately preceding the date of the coming into operation of this Act or of the establishment of the Board concerned under the repealed Act ; and

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[1] For Statement of Objects and Reasons, *see Bombay Government Gazette*, 1947, Pt. V, page 65 ; for Proceedings in Assembly, *see* Bombay Legislative Assembly Debates, 1947, Vol. X; and for Proceedings in Council, *see* Bombay Legislative Council Debates, 1947, Vol. XII.

[2] This word was substituted for the word "Province" by the Adaptation of Laws Order, 1950.

[3] These words were added by Bom. 70 of 1948, s. 2(*1*).

[4] These words were inserted, *ibid.*, s. 2(*2*).

(*iv*) whose annual income from sources other than agriculture and manual labour does not exceed 33 per cent. of his total annual income or does not exceed Rs. 500, whichever is greater :

(*b*) an undivided Hindu family—

(*i*) which is indebted ;

(*ii*) which holds land used for agricultural purposes or has held such land at any time not more than 30 years before the 30th January 1940, which land has been transferred whether under an instrument or not and which transfer is in the nature of a mortgage although not purporting to be so ;

(*iii*) which has been cultivating land personally for the cultivating seasons in the two years immediately preceding the date of the coming into operation of this Act or of the establishment of the Board concerned under the repealed Act ; and

(*iv*) the annual income of which from sources other than agricultural and manual labour does not exceed 40 per cent. of its total annual income and the aggregate of such incomes of the members of which does not exceed Rs. 1,500.

Explanation.—[1][*I*] For the purposes of this clause "agriculture" includes horticulture, the raising of crops or garden produce, dairy farming, poultry farming, stock breeding and grazing, but does not include leasing of land or cutting only of wood ;

[2][*Explanation II.*—In the case of—

(*a*) any person who dies leaving as his heir, a widow or a minor or a person who is subject to physical or mental disability, or

(*b*) an undivided Hindu family, in which there are no adult male co-parceners capable of cultivating the land personally,

the income derived by such heir or family by the lease of land for an agricultural purpose shall, notwithstanding anything contained in Explanation I, be deemed to be income from agriculture.]

[3][(*6*) "financing of crops" means advancing of loans for the raising of crops during the ploughing season or later for ploughing, sowing, harrowing, weeding, harvesting, purchase of seeds, manure or for such other purposes as may be prescribed, such loans being repayable during the season when the crops for which the loans were advanced are harvested] ;

(*7*) "holder" means a holder as defined in clause (*11*) of section 3 of the Bombay Land Revenue Code, 1879, and includes a holder of land held for the performance of service useful to Government or village community which service is actually being performed but does not include a holder of any land held on behalf of a religious or charitable institution ; and the expression "to hold land" shall be construed accordingly ; Bom. V of 1879.

[4][(*7a*) "merged State bank" means a bank incorporated as such in merged territories and notified by the State Government in the *Official Gazette* for the purposes of this Act as a merged State bank ;]

(*8*) "prescribed" means prescribed by rules ;

(*9*) "repealed Act" means the Bombay Agricultural Debtors Relief Act, 1939 ; Bom. XXVIII of 1939.

(*10*) "resource society" shall have the same meaning as it has in the Bombay Co-operative Societies Act, 1925 ; Bom. VII of 1925.

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[1] This Explanation was numbered as Explanation I by Bom. 70 of 1948, s. 2(3).

[2] This Explanation was added, *ibid.*

[3] This clause was substituted for the original, *ibid.*, s. 2 (4).

[4] Clause (*7a*) was inserted by Bom. 37 of 1950, s. 2.

(*11*) " rules " means rules made under section 55 ;

(*12*) " scheduled bank " means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 ; II of 1934.

(*13*) " Seasonal finance " means advancing of loans for such purposes as may be prescribed, such loans being repayable on or before the 15th May following ;

(*14*) " to cultivate personally " means to cultivate by one's own labour or by the labour of any member of one's family or by servants or hired labour under one's personal supervision or the personal supervision of any member of one's family.

Explanation I.—If a person who was cultivating personally dies leaving as his heir a widow or a minor or a person who is subject to physical or mental disability, such heir shall be deemed to cultivate the land personally notwithstanding the fact that the land is cultivated on behalf of such heir by servants or hired labour or by tenants.

Explanation II.—In the case of an undivided Hindu family, the land shall be deemed to have been cultivated personally if it is cultivated by any member of such family. If there are no adult male co-parceners in such family capable of cultivating the land personally, such family shall be deemed to be cultivating the land personally if the land is cultivated on behalf of such family by servants or hired labour or by tenants.

(*15*) Words and expressions used in this Act, but not defined, have the meanings assigned to them in the Code of Civil Procedure, 1908, or the Bombay Land Revenue Code, 1879, as the case may be. V of 1908, Bom. V of 1879.

3. Save as otherwise expressly provided, nothing in this Act shall affect the debts and liabilities of a debtor falling under the following heads, namely :— Savings

(*i*) any revenue or tax payable to Government or any other sum due to it by way of loan or otherwise,

(*ii*) any tax payable to a local authority or any other sum payable to such authority by way of loan or otherwise,

(*iii*) any sum due to a co-operative society,

(*iv*) any sum advanced solely for the purpose of financing of crops as provided in the repealed Act or for the purpose of seasonal finance as provided in this Act,

(*v*) any sum due under a decree or order for maintenance passed by a competent Court, [1]

(*vi*) any sum due to a scheduled bank, [2][and

(*vii*) any sum due to a merged State bank.]

CHAPTER II.

PROCEDURE FOR ADJUSTMENT OF DEBTS.

4. (*1*) Any debtor ordinarily residing in any local area for which a Board was established under section 4 of the repealed Act on or after the 1st February 1947, or his creditor may make an application before the 1st August 1947 to the Court for the adjustment of his debts. Application for adjustment of debts.

(*2*) Every application made under sub-section (*1*) shall be in writing in the prescribed form and shall be signed, verified and presented in the prescribed manner.

(*3*) Notwithstanding anything contained in section 3 an application made under this section shall contain the amounts and particulars of all debts specified in that section due by the debtor.

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[1] The word " and " was deleted by Bom. 37 of 1950, s. 3.

[2] This word and clause (*vii*) were added, *ibid.*

Every creditor and debtor to file a true and correct statement before Court.

5. (*1*) Notwithstanding the fact that no application has been filed under section 4—

(*a*) every creditor, on being required to do so by notice in writing by any of his debtors, shall, within two months from the date of the receipt of such notice, file before the Court a true and correct statement of all his claims against such debtor, and shall at the same time send a copy thereof to such debtor, and

(*b*) every debtor, on being required to do so by notice in writing by any of his creditors, shall, within two months from the date of the receipt of such notice, file before the Court a true and correct statement—

(*i*) of all the debts owed by such debtor;

(*ii*) whether he holds any land used for agricultural purposes and whether he has been cultivating land personally;

(*iii*) of his income from agriculture and from sources other than agriculture in the year preceding the date of the notice.

The debtor shall at the same time send a copy of such statement to such creditor:

Provided that the Court may, for sufficient cause, extend, from time to time, the period within which the creditor or the debtor, as the case may be, may file such statement.

(*2*) Every debtor or creditor giving a notice under sub-section (*1*) shall at the same time send a copy thereof to the Court.

(*3*) In awarding the costs of any proceeding in respect of any application made under section 4 the Court may, on being satisfied that the statement required to be filed under sub-section (*1*) was, without sufficient cause, not filed within the time specified therein or within the period extended under the proviso to sub-section (*1*) or incorrectly filed, direct the party in default to bear the whole or any portion of the costs of such proceeding.

Application by debtor jointly and severally liable.

6. (*1*) If the payment of a debt due by a debtor is guaranteed by a surety or if a debtor is otherwise jointly and severally liable for any debt along with any other person and if the surety or such other person is not a debtor, the debtor may make an application under section 4 for relief in respect of such debt and the Court may after consideration of the facts and circumstances of the case proceed with the adjustment of debts under this Act in so far as such applicant is concerned.

(*2*) Whenever the debts due by a debtor which are guaranteed by a surety are adjusted under sub-section (*1*), the surety shall be discharged from liability in respect of the debts or portion of the debts of such debtor which are extinguished under sub-section (*1*) of section 15, sub-section (*3*) of section 17, sub-section (*5*) of section 26, section 34 or sub-section (*2*) of section 35; and the surety shall not be entitled to proceed against the debtor in respect of such debts or portion.

Assignees from non-debtor not entitled to benefit of this Act.

7. No application shall lie under section 4 for adjustment of any debt due from a debtor to whom such debt has been transferred or assigned after the 1st January 1938 by any person who is not himself a debtor.

Application for recording settlement.

8. (*1*) If any debtor and any or all of his creditors arrive at a settlement in respect of any debt due by the debtor to the creditor, the debtor or any of the creditors may, within thirty days from the date of such settlement, make an application to the Court for recording such settlement.

(*2*) Every such application shall be in the prescribed form and shall be signed and verified in the prescribed manner.

(*3*) On receipt of such application the Court shall, after giving notice to the creditor or the debtor, as the case may be, and after making such enquiry as it thinks fit, if it is satisfied that the settlement arrived at is *bona fide* and voluntary and is not made with intent to defeat or delay any of the creditors of the debtor, and is in the interest of the debtor, [1]* * * * * * * * * * * * *record such settlement and certify the same. Every such settlement so recorded and certified shall be binding upon the parties thereto and shall not, save as otherwise hereinafter provided, be re-opened.

(*4*) After the Court has recorded and certified a settlement under sub-section (*3*), the Court shall call upon the debtor to make a declaration whether there are any other debts due by the debtor which are not included in the settlement. If the debtor makes a declaration that there are no such debts, the Court shall make an award in terms of such settlement.

(*5*) If the Court is satisfied, after recording such settlement, that there are other debts due from the debtor which are not included in the settlement, the Court shall treat the application made under sub-section (*1*) as an application for adjustment of debts under section 4.

Settlement during pendency of proceedings before Court.

9. Notwithstanding anything contained in the preceding sections, if during the pendency of proceedings before the Court or the Court in appeal, as the case may be a settlement is arrived at between a debtor and all his creditors and if such Court is satisfied that the settlement has been made by the debtor voluntarily and is for his benefit, such Court may make an award in terms of such settlement.

Certain settlements to be void.

10. Every settlement of a debt due from a debtor to any creditor, which is not certified by the Court under section 8, or in terms of which no award has been made under section 9, shall be void and shall not be recognised by any Court for any purpose whatsoever.

Application under section 4 or 8 to be made only in respect of debtor whose debts are not more than Rs.15,000.

11. No application under section 4 or 8 shall be entertained by the Court on behalf of or in respect of any debtor, unless the total amount of debts due from him on the date of the application is not more than Rs. 15,000.

Withdrawal of applications.

12. An application for adjustment of debts under section 4 or an application for recording a settlement under section 8 shall not be withdrawn without the leave of the Court.

Consolidation of applications.

13. Where two or more applications for adjustment of debts under section 4 are presented by or against the same debtor, all such applications shall be consolidated. Where such separate applications are presented [2][by or] against joint debtors, all such applications shall be heard together.

Power of Civil Judge to refer for disposal certain applications to Joint Civil Judge.

[3][**13A.** A Civil Judge may refer for disposal any application filed under section 4 or 8 to a Joint Civil Judge.]

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[1] The words, brackets, letters, and figures "and that the debtor is a person who fulfills the conditions referred to ir clauses (*a*) and (*b*) of sub-section (*1*) of section 17" were deleted by Bom. 37 of 1955, s. 2.

[2] These words were inserted by Bom. 70 of 1948, s. 3.

[3] This section was inserted, *ibid.*, s. 4.

Service of notice on debtors and creditors to submit statement of debts.

14. On receipt of an application for adjustment of debts, the Court shall—

(*a*) give notice to the debtor (unless the debtor is himself an applicant) and to every creditor (other than the creditor who is himself an applicant) whose name and address are given in the application, and

(*b*) publish a general notice,

requiring the debtor and all creditors to submit a statement in the prescribed form within one month from the date of the service of the notice or the publication of the general notice, whichever is later:

Provided that if the Court is satisfied that the debtor or any creditor is for good and sufficient cause unable to comply with the notice within the time specified therein it may extend the period for the submission of the statement.

Debts in respect of which no application for adjustment or settlement is made to be void.

15. (*1*) Every debt due from a debtor in respect of which no application has been made under section 4 within the period specified in the said section 4 or in respect of which no application for recording a settlement is made under section 8 within the period specified in the said section 8 or in respect of which an application made to the Court is withdrawn under section 12 and no fresh application is made under section 4 and every debt due from such debtor in respect of which a statement is not submitted to the Court by the creditor in compliance with the provisions of section 14 shall be extinguished.

(*2*) Nothing in this section shall apply to any debt due from any person who has by his declaration, act or omission intentionally caused or permitted his creditor to believe that he is not a debtor for the purposes of this Act or that no application under section 4 can be entertained in respect of any debt owed by such person to such creditor by reason of the provisions of section 11.

Duties of debtors and creditors.

16. (*1*) Every debtor by or against whom an application is made under section 4 or who is a party to an application made under section 8 shall produce all books of accounts and shall give such inventories of his property and such lists of his creditors and debtors and of the debts due from and to him, submit to such examination in respect of his property or his creditors, attend at such time before the Court, and generally do all such things as may be required by the Court or as may be prescribed.

(*2*) It shall be the duty of every creditor to produce such books of accounts, to submit to such examination and to supply such information in respect of the debt due to him by the debtor and the securities held by him, as may be required by the Court or as may be prescribed.

Preliminary issues.

17. (*1*) On the date fixed for the hearing of an application made under section 4, the Court shall decide the following points as preliminary issues:—

(*a*) whether the person for the adjustment of whose debts the application has been made is a debtor;

(*b*) whether the total amount of debts due from such person on the date of the application exceeds Rs. 15,000.

(*2*) If the Court finds that such person is not a debtor or that the total amount of debts due from such person on the date of the application is more than Rs. 15,000 the Court shall dismiss the application forthwith:

Provided that before the application is so dismissed the creditors or any of them may remit any specific portion of their claim so as to reduce the total amount of the debts of all the creditors due from such person on the date of the application to a sum not exceeding Rs. 15,000. In such case the Court shall not dismiss the application but shall proceed further with the same.

(*3*) The portion of the debts in respect of which the claim is remitted under sub-section (*2* shall be extinguished.

[1][*Explanation.*—For the purposes of this section, the expression " the date of the application " shall mean the date of an application which has been made within the period prescribed under section 4 and where there are two or more applications made for adjustment of debts of the same debtor, the date of the last of such applications.]

18. [*Court-fee to be refunded to creditor.*] *Rep. by Bom. 70 of 1948, s. 6.*

Transfer of pending suits, appeals, applications and proceedings to the Court.

19. (*1*) All suits, appeals, applications for execution and proceedings [2][including revisional proceedings pending before a District Judge under section 53 of the Dekkhan Agriculturists' Relief Act, 1879] in respect of any debt pending in any civil or revenue court shall, if they involve the questions whether the person from whom such debt is due is a debtor and whether the total amount of debts due from him [3]* * * * exceeds Rs. 15,000, be transferred to the Court.

XVII of 1879.

(*2*) When an application for adjustment of debts made to a Court under section 4 or a statement submitted to a Court under section 14 includes a debt in respect of which a suit, appeal, application for execution or proceeding [4][liable to be transferred under sub-section (*1*)] is pending before a civil or revenue court, the Court shall give notice thereof to such other court. On receipt of such notice, such other court shall transfer the suit, appeal, application or proceeding, as the case may be, to the Court.

(*3*) When any suit, appeal, application or proceeding is transferred to the Court under sub-section (*1*) or sub-section (*2*), the Court shall proceed as if an application under section 4 had been made to it.

(*4*) If the Court, to which any suit, appeal, application or proceeding is transferred under sub-section (*1*) or sub-section (*2*), decides the preliminary issue mentioned in clause (*a*) of sub-section (*1*) of section 17 in the negative or that mentioned in clause (*b*) of the said sub-section (*1*) in the affirmative, it shall retransfer the suit, appeal, application or proceeding to the court from which it had been transferred to itself after the disposal and subject to the result of the appeal where an appeal is filed, and after the expiry of the period prescribed for an appeal where no appeal is filed.

(*5*) When any suit, appeal, application or proceeding is retransferred to the court under sub-section (*4*), the said court shall proceed with the same.

[5][(*6*) When such suit, appeal, application or proceeding involves the determination of any issue entirely unconnected with the adjustment of debts, the transfer of such suit, appeal, application or proceeding under this section shall not empower the Court to determine the said issue and the determination of such issue shall be made as if the transfer of the suit, appeal, application or proceeding was not made under this section.

(*7*) When any question arises regarding the validity of the transfer or retransfer under this section of any suit, appeal, application or proceeding or if any question

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[1] This Explanation was added by Bom. 70 of 1948, s. 5.
[2] These words and figures were substituted for the words " other than revisional " *ibid.*, s. 7 (*1*).
[3] The words " on the date of the application " were deleted, *ibid.*
[4] These words, brackets and figure were substituted for the words "other than revisional", *ibid.*, s. 7 (*2*).
[5] Sub-sections (*6*) and (*7*) were added, *ibid.*, s. 7 (*3*).

arises whether any issue is or is not entirely unconnected with the adjustment of debts, the Court before which such question arises, if it is not the District Court, may refer the question for decision of the District Court. If such question arises before the District Court, the District Court itself shall decide the same. The decision of the District Court in either case shall be final.]

Taking of accounts.

20. If the Court finds the person making an application under section 4 or the person against whom an application is made under the said section 4 to be a person—

(*a*) who is a debtor, and

(*b*) the total amount of debts due from whom on the date of the application is not more than Rs. 15,000,

the Court shall proceed to take accounts in the manner hereinafter provided.

Examination of creditor and debtor.

21. In an application for the adjustment of debts if the amount of the creditor's claim is disputed, the Court shall, when taking accounts, examine both the creditor and the debtor as witnesses, unless for reasons to be recorded the Court deems it unnecessary so to do.

Mode of taking accounts.

22. Notwithstanding any agreement between the parties or the persons (if any) through whom they claim, as to allowing compound interest or setting off the profits of mortgaged property without an account in lieu of interest, or otherwise determining the manner of taking the account, and notwithstanding any statement or settlement of account, or any contract purporting to close previous dealings and create a new obligation, the Court shall inquire into the history and merits of the case and take account between the parties from the commencement of the transactions subsisting between the parties and the persons (if any) through whom they claim, out of which the claim has arisen and determine the amount due to each of the creditors at the date of the application made under section 4, according to the following rules, namely :—

(*1*) (*a*) Separate accounts of principal and interest shall be taken;

(*b*) In the account of principal there shall be debited to the debtor only such money as may from time to time have been actually received by him or on his account from the creditor, and the price of goods, if any, sold to him by the creditor;

(*c*) In the accounts of principal and interest there shall also be debited the amounts, if any, respectively due for principal (including costs) and interest under any decree or order passed by a competent court in respect of any debt :

Provided that if such decree or order does not specify the amount of principal and interest separately or does not contain any material for determining the same, two-third and one-third of the amount awarded by such decree or order shall for purposes of this clause, be deemed to be the amount awarded on account of principal (including costs) and interest, respectively.

(*2*) In the case of transactions which commenced before the 1st January 1931 the Court shall take the account up to the date of the institution of the application and in the account of interest there shall be debited to the debtor, simple interest on the balance of principal for the time being outstanding at the rate agreed upon between the parties or at the rate allowed under any decree passed between the parties, or at a rate not exceeding 12 per cent. per annum, whichever is the lowest. The amount found due in respect of principal as well as in respect of interest shall, each separately, be reduced by 40 per cent. notwithstanding that a decree or order of a civil court was passed in respect of any such amount or portion thereof. The amounts so reduced shall be taken to represent the amounts due in respect of principal and interest on the date of the institution of the application.

(*3*) In the case of transactions which commenced on or after the 1st January 1931 but before the 1st January 1940 in the account of interest there shall be debited to the debtor, simple interest on the balance of principal for the time being

outstanding at the rate agreed upon between the parties, or at the rate allowed under any decree passed between the parties, or at a rate not exceeding 9 per cent. per annum, whichever is the lowest. The amount found due on the date of the institution of the application in respect of principal as well as interest shall each separately be reduced by 30 per cent. notwithstanding that a decree or order of a civil court was passed in respect of any such amount or portion thereof. The amounts so reduced shall be taken to represent the amounts due in respect of principal and interest on the date of the institution of the application.

(*4*) In the case of transactions which commenced on or after the 1st January 1940, in the account of interest there shall be debited to the debtor simple interest on the balance of principal for the time being outstanding at the rate agreed upon between the parties, or at the rate allowed under any decree passed between the parties, or at rate not exceeding 6 per cent. per annum, whichever is the lowest.

(*5*) All money paid by or on account of the debtor to the creditor or on his account and all profits, service or other advantages of every description received by the creditor in the course of the transactions (estimated, if necessary, at such money-value as the Court in its discretion may determine) shall be credited first in the account of interest, and when any payment is more than sufficient to discharge the balance of interest due at the rate specified in rule (2), (3) or (4), as the case may be, the residue of such payment shall be credited to the debtor in the account of principal.

(*6*) The accounts of principal and interest shall be made up to the date of the institution of the application, and the aggregate of the balance, if any, appearing due on both such accounts against the debtor on that date shall be deemed to be the amount due at that date, except when the balance appearing due on the interest-account exceeds that appearing due on the principal-account, in which case, double the latter balance shall be deemed to be the amount then due :

Provided that where the transactions between the parties have commenced more than 30 years before the 30th January 1940 any settlement of accounts which has been last arrived at between the parties before the said period of 30 years and which is in writing and bears the signature of the debtor or the person through whom the liability is derived shall be accepted as binding between the parties and no inquiry into the history and merits of the case shall be made prior to the date of such settlement.

23. Where any mortgaged property is in the possession of the mortgagee or his tenants other than the mortgagor and the Court is unable to determine what profits have actually been received, it may fix a fair rent for such property and charge to the mortgagee such rent as profits for the purpose of section 22 : **In certain cases rent may be charged in lieu of profits.**

Provided that, if it be proved that in any year there was any suspension or remission of rent or land revenue of such land under section 84A of the Bombay Land Revenue Code, 1879, an abatement of the whole or part of such amount may be allowed for the year. **Bom. of 1879.**

24. (*1*) Notwithstanding anything to the contrary contained in any law, custom, or contract, whenever it is alleged during the course of the hearing of an application made under section 4 that any transfer of land by a person whose debts are being adjusted under this Act or any other person through whom he inherited it was a transfer in the nature of a mortgage, the Court shall declare the transfer to be a mortgage, if the Court is satisfied that the circumstances connected with that transfer showed it to be in the nature of a mortgage. **Power of Court to declare transfer purporting to be sale to be in nature of mortgage.**

(*2*) Any agricultural labourer may make an application before the 1st August 1947 to the Court that any transfer of land by him or any other person through whom he inherited it was a transfer in the nature of a mortgage. On hearing the application, the Court shall, notwithstanding anything to the contrary contained in any law, custom, or contract, declare the transfer to be a mortgage, if it is satisfied that the circumstances connected with the transfer showed it to be in the nature of a mortgage. When the Court makes any such declaration, the applicant shall, notwithstanding anything contained in the definition of " debtor " in sub-section (*5*) of section 2, be deemed to be a debtor for the purposes of this Act and the Court shall proceed as if an application under section 4 had been made to it.

Provisions of section 24 not to apply to certain transfers and transferees.

25. Nothing in section 24 shall apply to—

(*i*) any transfer which has been [1][finally] adjudged to be a transfer other than a mortgage by a decree of a court of competent jurisdiction or by a Board established under section 4 of the repealed Act; and

(*ii*) any *bona fide* transferee for value without notice of the real nature of such transfer or his representative where such transferee or representative holds under a registered deed executed on or before the 15th day of February 1939.

Notice to Collector, co-operative societies, Registrar, local authorities and others.

26. (*1*) On receipt of an application for adjustment of debts, the Court shall give notice to the Collector requiring him to state to the Court within such time as may be fixed by it the amount of the debt due by the debtor to Government.

(*2*) The Court shall also give similar notice to any local authority, co-operative society [2][scheduled bank or merged State bank] to which any debt may be due by the debtor and also to any person who is entitled to maintenance from the debtor, under a decree or order passed by a competent Court. In the case of any debt due to a co-operative society, the Court shall also give notice to the Registrar of Co-operative Societies or to such officer as the Registrar may nominate in this behalf.

(*3*) On receipt of such notice the Collector, the local authority, the co-operative society [3][the scheduled bank, or the merged State bank] or the person entitled to maintenance, as the case may be, shall, within such time as may be fixed by the Court, from time to time submit a statement to the Court showing the total amount of the debt due by the debtor as also any recurring liability against such debtor in respect of the liability for maintenance under the decree or order.

(*4*) The Collector [4][the co-operative society, the scheduled bank and the merged State bank] shall also furnish a statement to the Court showing the amount of remission which the [5][State] Government, the co-operative society, [3][the scheduled bank or the merged State bank], as the case may be, is willing to give in respect of the debt.

(*5*) The portion of any debt remitted under sub-section (*4*), and unless the Court otherwise directs any debt or portion thereof in respect of which no statement is submitted under sub-section (*3*), shall be extinguished.

Court's duty to determine particulars, value, etc., of property.

27. After taking accounts under section 22 the Court shall in the manner hereinafter provided determine—

(*1*) the particulars of the property belonging to the debtor,

(*2*) the value of the said property,

(*3*) the particulars of any incumbrances on the said property, and

(*4*) the paying capacity of the debtor.

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[1] This word was inserted by Bom. 70 of 1948, s. 8.

[2] These words were substituted for the words " or scheduled bank " by Bom. 37 of 1950, s. 4.

[3] These words were substituted for the words " or the scheduled bank ", *ibid.*

[4] These words were substituted for the words " the Co-operative Society and the scheduled bank " *ibid.*

[5] This word was substituted for the word " Provincial " by the Adaptation of Laws Order, 1950.

Fraudulent alienations or incumbrances void.

28. (*1*) If in the course of the hearing of an application made under section 4, the Court finds that the debtor has made an alienation of property or created any incumbrance thereon with intent to defeat or delay any of his creditors, the Court shall, by notice, summon the debtor and the person in whose favour the alienation or incumbrance is made or created to appear before it on a day to be specified in the notice.

(*2*) On the day specified in the notice or such other day to which the hearing may be adjourned the Court shall hear the parties [1][and record evidence as may be produced] and if it is satisfied that the alienation was made or the incumbrance was created with intent to defeat or delay any of the creditors of the debtor, the Court shall declare the alienation or incumbrance to be void.

(*3*) Nothing in this section shall impair the rights of an alienee or the holder of an incumbrance in good faith and for valuable consideration.

Value of property of debtor to be determined by Court in prescribed manner.

29. (*1*) Subject to the provisions of sub-sections (*2*), (*3*) and (*4*), the value of the property and other assets of a debtor for the purposes of ascertaining the paying capacity of the debtor under section 27 shall be determined by the Court in the prescribed manner.

V of 1908.

(*2*) The property or assets which are exempt from attachment in execution of a decree of a civil court under the Code of Civil Procedure, 1908, shall not be taken into account.

(*3*) The amount of the debts mentioned in section 3 shall be deducted.

(*4*) The market value of the lands, which under any law for the time being in force, are not transferable or alienable except with the previous sanction of the Collector or the [2][State] Government, shall be calculated in such manner as may be prescribed.

Paying capacity.

30. The paying capacity of the debtor, shall, for the purposes of this Act, be deemed to be sixty per cent. of the value of all the property of the debtor :

Provided that when any portion of such property yields income but the market value of such portion cannot be determined, the value of such portion shall be the amount of the income capitalized at six per cent. per annum.

Debts payable by debtors to be scaled down.

31. (*1*) Notwithstanding any law, custom, contract, award or decree of a court to the contrary the amounts found due under section 22 from a debtor shall be further scaled down in the manner hereinafter provided.

(*2*) If all the debts found due by a debtor after taking accounts under section 22 are unsecured, such debts shall be further scaled down *pro rata* to the paying capacity of the debtor.

(*3*) If all the debts found due by a debtor after taking accounts under section 22, are secured debts, and the total amount of such debts is more than sixty per cent. of the value of the property belonging to the debtor, such debts shall be further scaled down *pro rata* to the paying capacity of the debtor.

(*4*) If the debts found due by a debtor after taking accounts under section 22 are both secured and unsecured, and if the total amount of the secured debts is more than sixty per cent. of the value of the property on which such debts are secured, the secured debts shall be further scaled down *pro rata* to sixty per cent. of the value of the property on which such debts are secured and the unsecured debts shall be further scaled down *pro rata* to sixty per cent. of the value of the other property belonging to the debtor over which no debts are secured.

[1] These words were inserted by Bom. 70 of 1948, s. 9.
[2] This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

Award.

32. (*1*) After determining the amount of debts scaled down in the manner provided in section 31 the Court shall, save as otherwise provided in section 33, make an award.

(*2*) The award shall be in the prescribed form and shall be drawn up subject to the following provisions :—

(*i*) the amount of the secured debts scaled down shall be charged on the properties on which they may have been secured ;

(*ii*) subject to clause (*i*) the amount of unsecured debts shall be charged on all the properties of the debtor [1][unless all the creditors declare in writing that the unsecured debts due may not be charged on any of the properties of the debtor] ;

(*iii*) in fixing the priority in which debts shall be paid the following order shall be followed :—

(*a*) debts due to Government, which are charged on the immovable property belonging to the debtor or which are recoverable as the current year's land revenue.

(*b*) debts due to local authorities, which are charged on the immovable property belonging to the debtor or which are recoverable as the current year's dues.

(*c*) loans given by resource societies or by persons authorized to advance loans under section 78 of the repealed Act or section 54 of this Act for the financing of crops under the repealed Act or for seasonal finance under this Act after the 30th January 1940 and other loans given for financing crops after the 1st January 1939 and before the 30th January 1940.

(*d*) secured debts in order of priority,

(*e*) debts due to Government, local authorities and other bodies including co-operative societies, and recoverable as arrears of land revenue,

(*f*) other debts due to co-operarive societies,

[2][(*ff*) debts due to merged State banks,]

(*g*) unsecured debts :

Provided that in the case of unsecured debts they shall be paid *pro rata* ;

(*iv*) the total annual instalments shall not exceed twelve :

Provided that in fixing the amount of instalments in which the debts shall be paid the Court shall ascertain the net annual income of the debtor and the annual instalments payable by the debtor shall not exceed his net annual income.

Explanation.—For the purposes of this clause, the net annual income of the debtor shall mean the balance of his annual income after deducting (*i*) such sum as may be considered necessary for the payment of the liability, if any, imposed on the debtor under a decree or order for maintenance passed by a competent Court, (*ii*) such sum as may be considered necessary for the maintenance of the debtor and his dependants, and (*iii*) the sum required by the debtor to pay the assessment and taxes in respect of the current year to Government and to local authorities and to pay off loans borrowed for the purpose of the financing of crops under the repealed Act or seasonal finance under this Act ;

(*v*) the Court may pass an order for the delivery of possession of any property notwithstanding any law or contract to the contrary ;

(*vi*) the rate of interest shall not exceed 6 per cent. per annum or such less rate as may be notified in this behalf by the [State] Government or the rate agreed upon between the parties when the debt was originally incurred or the rate allowed by the decree in respect of such debt, whichever is the lowest.

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[1] This portion was added by Bom. 37 of 1950, s. 5.
[2] Sub-section (*ff*) was inserted, *ibid.*
[3] This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

Court to prepare scheme for adjustment of debts through Provincial Land Mortgage Bank.

33. (*1*) Where the amount of debts of the debtor as scaled down under section 31 by it exceeds half the value of the debtor's immovable property as determined by it, the Court shall intimate to the creditors the amount of the said debts of the debtor and the said value of the debtor's immovable property and call upon them to state in writing within a specified period not exceeding one month whether they agree to the further scaling down of the said debts so as to reduce them to a sum not exceeding half the said value of the immovable property of the debtor. If [1][a majority in number and three-fourth in value of all the creditors] agree to the further scaling down of the debts, the Court shall make an order directing the debtor to pay the amount of such debts so agreed upon within a period of one month from the date of the order.

[2][(*2*) Unless the debtor pays the amount of such debts within a period of one month from the date of the order or such extended period not exceeding one month as the Court may allow and produces the creditor's receipt therefor, the Court shall prepare a scheme embodying the terms of an award to be passed under this section for adjustment of the debts and shall send the scheme to the Primary Land Mortgage Bank situated in the local area and if there is no such Primary Land Mortgage Bank in that local area, to the Bombay Provincial Co-operative Land Mortgage Bank, for acceptance within a period of two months from the date of receipt by it of the scheme. If the Primary Land Mortgage Bank or the Bombay Provincial Co-operative Land Mortgage Bank, as the case may be, agrees to accept the scheme, or does not inform the Court within the period of the said two months that it does not agree to accept the scheme, the Court shall make an award in the prescribed form directing that the Land Mortgage Bank concerned shall pay the creditors in cash the debt as finally scaled down or if the creditors so desire, in bonds issued by the Bombay Provincial Co-operative Land Mortgage Bank, such bonds being guaranteed by the State Government, for such amount in full satisfaction of all the debts due to them from the debtor. The Court shall further direct that such amount shall be charged on all the immovable property of the debtor.]

[3][(*2A*) (*a*) Where any award made under sub-section (*1*) of section 55 of the repealed Act or under sub-section (*2*) of this section has either before or after the Bombay Agricultural Debtors' Relief (Amendment) Act, 1948, has come into force been wrongly forwarded for payment to the creditors of the debt as finally scaled down to any Primary Land Mortgage Bank which under its by-laws was not competent to make payment to the creditors, it shall be lawful to the Court notwithstanding anything contained in this Act, on application made by the creditor concerned and after holding such inquiry as it deems fit, to direct that the said award be forwarded to the Primary Land Mortgage Bank for the local area concerned competent to make the payment or to the Bombay Provincial Co-operative Land Mortgage Bank, as the case may be, for making payment in accordance with this section.

Bom. LXX of 1948.

(*b*) The award directed to be forwarded under clause (*a*) shall not be deemed to have been wrongly forwarded only on the ground that it was originally forwarded to a Primary Land Mortgage Bank not competent to make the payment, and shall, notwithstanding anything contained in this Act, be deemed to have been duly forwarded under sub-section (*2*) and shall be executed in accordance with the provisions of this Act.]

[4][(*3*) The Bank shall be entitled to recover the amount due to it from the debtor in such annual instalments as may be fixed by the Court. The amount of principal shall carry and be recoverable together with interest at such rate not

[1] These words were substituted for the words " all the creditors " by Bom. 70 of 1948, s. 10 (*1*).
[2] Sub-section (*2*) was substituted for the original by Bom. 37 of 1950, s. 6.
[3] Sub-section (*2A*) was inserted by Bom. 70 of 1948, s. 10 (*2*).
[4] This sub-section was substituted for the original, *ibid*, s. 10 (*3*).

exceeding [1][7 13/16 per cent.] per annum as the [2][State] Government may notify in this behalf in the *Official Gazette*, from time to time.]

(*4*) All sums due under an award made in favour of the bank under this section shall be recoverable as arrears of land revenue :

[3][Provided that any application for the recovery of such sums shall be made to the Collector and shall be accompanied by a certificate signed by the Court.]

No recovery of amount in excess of debts scaled down.

34. The amount of debts scaled down under section 31 or further scaled down under section 33 shall for the purposes of this Act be the amount due by the debtor in respect of the said debts and the portion of the debts in excess of this amount shall be extinguished.

Debts not to be scaled down in case of collusion.

35. If the Court making an award under section 32 is at any stage of the proceeding satisfied—

(*1*) that the debtor had in collusion with any creditor furnished in such proceeding incorrect information in respect of the debt due by him to such creditor with a view to defeat the lawful claims of any other creditor, the Court may refuse to scale down any of the debts of such debtor in the manner provided in section 31 and may make an award for the full amount of the debts due from such debtor ;

(*2*) that any claim by a creditor in such proceeding had been put forward in collusion between the debtor and such creditor with a view to defeat the lawful claims of any other creditor, the Court shall order that the debt due by the debtor to such creditor shall be extinguished and such debt shall not be recoverable.

Ex parte proceedings if any party does not appear.

36. (*1*) Notwithstanding that the person for the adjustment of whose debts an application has been made under section 4 or any of his creditors does not appear on the date fixed for the hearing of the application or on any date to which it may be adjourned, the Court shall proceed *ex parte* to hear the application, decide the preliminary issues and, if necessary, make the award, on the evidence available.

(*2*) When an application made under section 4 is heard and disposed of *ex parte* under sub-section (*1*), the decision on the preliminary issues or the award shall not, except for sufficient reasons, be re-opened merely on the ground that any of the parties thereto did not appear at the hearing.

Re-opening of award and re-adjustment of debts.

37. If, after an award is made under section 32, the Court finds on an application made to it by any party or otherwise, that the debtor has other property which was not disclosed to the Court when the award was made, or that any property included in the award did not belong to the debtor, the Court may, notwithstanding anything contained in this Act, reopen the award and readjust the debts in accordance with the provisions of this Act :

Provided that where the Court is satisfied that the non-disclosure of such property was in consequence of any fraud on the part of the debtor, the Court in revising the award shall not give the debtor the benefit of section 31.

Award to be registered · how executed.

38. [4][(*1*) Every award made under this Act [5][if it is in respect of debts charged on the properties of the debtor] shall, on payment of the court-fee payable under section 44, be registered in the manner provided in Chapter II-A.]

(*2*) The court-fee on the award shall be paid by the party ordered by the Court to bear the costs :

Provided that any creditor who is not ordered to bear the costs may pay such court-fee. Such creditor shall be entitled to recover the amount of court-fee paid by him from the debtor with the first instalment payable to him under the award :

Provided further that no court-fee shall be payable by a co-operative society.

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[1] These figures and words were substituted for the words " six per cent." by Bom. 22 of 1953, s. 2.
[2] This word was substituted for the word " Provincial " by the Adaptation of Laws Order, 1950.
[3] These words were added, by Bom. 70 of 1948, s. 10 (*4*).
[4] This sub-section was substituted for the original *ibid.* s. 11 (*1*).
[5] These words were inserted by Bom. 37 of 1950, s. 7.

(*3*) The award [1]* * shall be executed as follows :—

(*i*) If the debtor makes default in the payment of any instalment due under the award to any creditor such creditor may apply in the prescribed form to the Court for execution of the award.

(*ii*) If the Court on receipt of such application is satisfied that the debtor has made default in the payment of the instalment the Court shall transfer the award for execution to the Collector and thereupon the Collector shall recover the amount of the instalment from the debtor as arrears of land revenue :

Provided that nothing in [2][clauses (*i*) and (*ii*)] shall affect the right of Government, a local authority or a co-operative society to have recourse to any mode of recovery allowable by any law for the time being in force.

[3][(*iii*) If the Court has passed an order for the delivery of possession of any property under clause (*v*) of sub-section (*2*) of section 32 such order shall on the application be executed by the Court as if it were a decree passed by it.]

Postponement of payment of instalment in case of remissions, etc.

39. (*1*) Whenever from any cause the payment of one-half or more of the land revenue payable to the [4][State] Government is suspended or remitted the payment of the whole of the instalment due for that year and the full amount of the instalment due for each subsequent year under an award made under section 8, 9, 32 or 33 shall be postponed for one year.

(*2*) Whenever from any cause the payment of any portion less than one-half of the land revenue payable to the [4][State] Government is suspended or remitted one-half of the amount of the instalment for that year and the full amount of the instalment due for each subsequent year under an award made under section 8, 9, 32 or 33 shall be postponed for one year.

No alienation by debtor before discharge of debts valid.

40. Notwithstanding any law or contract but subject to the provisions of [5][sections 41 and 53], no alienation of any property belonging to a debtor who is a party to any proceedings [6][under this Act or an award registered under this Act], made by him before all his debts are discharged shall be valid, except with the previous sanction of the [7][Court].

Court may order sale of debtor's property in liquidation of his debt.

41. If the Court or the Court hearing an appeal against the award is at any time satisfied that it is in the interest of a debtor that any part of his property should be sold in liquidation of his debt or part thereof, such Court may permit the debtor to sell such part of the property for such purpose within a specified period. If the debtor fails so to sell it, such Court may order an officer of the Court to sell the same. The property ordered to be sold under this section shall be sold by such officer in the manner prescribed :

Provided that the part of the property ordered to be sold under this section shall not exceed the part liable to be sold under sub-section (*2*) of section 47.

Pleaders, etc. excluded from appearance.

42. Except in proceedings under [8][sections 24 and 28 and sub-section (*3*) of section 38] no pleader shall be entitled to appear on behalf of any party in any proceeding before the Court or the Court in appeal under this Act :

[9][Provided that the Court or the Court in appeal in the interest of justice for reasons to be recorded in writing may allow the parties to be represented at their own cost by a pleader :]

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[1] The words "so registered" were deleted by Bom. 37 of 1950, s 7.
[2] These words, brackets and figures were substituted for "this sub-section" by Bom. 70 of 1948, s. 11 (*2*).
[3] This clause was added, *ibid.*
[4] This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.
[5] This portion was substituted for the word and figures "section 41" by Bom. 70 of 1948, s. 12 (*1*).
[6] This portion was substituted for the words "or award under this Act" by Bom. 37 of 1950, s. 5.
[7] This word was substituted for the words "Provincial Government", by Bom. 70 of 1948, s. 12 (*2*).
[8] These words, figures and brackets were substituted for the words and figures "sections 24 and 28" by Bom. 19 of 1952, s. 2.
[9] This proviso was substituted for the original by Bom. 70 of 1948, s. 13 (*1*).

Provided further that pleader's fees shall not be allowed as part of the costs for the appearance of a pleader in any proceeding under this Act.

[1][Provided also that if any officer of Government is appointed or declared by a competent court or is authorised, under any law for the time being in force as a guardian, administrator or manager of the property of a person who is under a legal disability or is incompetent or unable to manage or to act, such officer shall be entitled to appear through a representative authorised by him in writing in this behalf in any proceedings before the Court or the Court in appeal. Such representative may also submit any application and otherwise act on behalf of the officer in any such proceedings.]

Appeals.

43. Notwithstanding anything contained in any other law [2]* * * (*1*) an appeal shall lie—

(*i*) from every order passed under sub-section (*3*) of section 8;

(*ii*) from every order passed under section 17;

(*iii*) from every order passed under section 24;

(*iv*) from every order passed under section 28;

(*v*) from every order passed under sub-section (*2*) of section 36;

(*vi*) from every award made under this Act other than an award made in terms of a settlement under sub-section (*4*) of section 8 or under section 9 or an award made under section 33 before the making of which the creditors' agreement has been obtained under sub-section (*1*) thereof or an award before the making of which neither the debtor nor any of the creditors produced evidence to enable the Court to determine the amount of debt due from the debtor;

[3][(*vii*) from an order made [4][under sub-section (*1*) or (*1A*) of section 47, adjudicating the debtor an insolvent,] provided that no appeal shall lie from such order except on the ground that the insolvent has failed to disclose all the material facts relating to his assets and liabilities;]

[5][(*2*) an appeal from the Court shall lie to the District Court, and the appeal shall be made within sixty days from the date of the coming into force of the Bombay Agricultural Debtors Relief (Amendment) Act, 1948, or from the date of the order or award, as the case may be, whichever is later. In computing the period of sixty days the provisions contained in sections 4, 5 and 12 of the Indian Limitation Act, 1908, shall, so far as may be, apply;] Bom. LXX of 1948, IX of 1908.

(*3*) no second appeal shall lie against any decision, order or award of the court under this Act.

Power of District Judge to refer for disposal certain appeals to Assistant Judge or Civil Judge empowered to hear appeals.

[6][**43A.** A District Judge may refer for disposal any appeal filed under the last preceding section to an Assistant Judge, or a Civil Judge invested with power to hear appeals under section 27 of the Bombay Civil Courts Act, 1869.] XIV of 1869.

Court-fees.

44. (*1*) Notwithstanding anything contained in the Court-fees Act, 1870, court-fees payable in respect of proceedings under this Act shall be at the following rates:— VII of 1870.

(*i*) on an application under sub-section (*1*) of section 4 or of section 8 or on an award under sub-section (*4*) of section 8 or section 9—Re. 1;

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[1] This proviso was added by Bom. 70 of 1948, s. 13 (*2*)

[2] The words and figures " and save as otherwise provided in section 51 " were deleted, *ibid*, s. 14 (*1*).

[3] This sub-clause was added, *ibid*, s. 14 (*2*).

[4] This portion was substituted for the words and figures " under section 47 " by Bom. 41 of 1951, s. 2.

[5] This clause was substituted for the original by Bom. 70 of 1948, s. 14 (*3*).

[6] This section was inserted, *ibid*, s. 15.

(*ii*) on an award other than an award specified in clause (*i*)—Re. 1 for every hundred rupees, or part thereof, of the amount of the award, subject to a maximum of Rs. 50;

(*iii*) on an appeal against a decision of the Court under sub-section (*3*) of section 8 or sub-section (*2*) of section 17—Rs. 2;

(*iv*) on an appeal other than an appeal specified in clause (*iii*)—Re. 1 for every hundred rupees, or part thereof, of [1][the amount involved] subject to a maximum of Rs. 50.

(*2*) Notwithstanding anything contained in any law, the court-fees payable in respect of proceedings under this Act shall be a first charge on the property of the party ordered to pay the costs and shall be recoverable in such manner as may be prescribed.

Notice how served.

45. Any notice required to be served under this Act shall be served in the manner provided in the Code of Civil Procedure, 1908; and when rules are made in that behalf in such manner as may be prescribed.

V of 1908.

Provisions of Civil Procedure Code to apply to proceedings.

46. Save as otherwise expressly provided in this Act, the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings under this Chapter:

V of 1908.

[2][Provided that the Court may in a proper case and on such terms as may appear to it to be just, exercise its powers to add or strike out parties under rule 10 of Order I of the said Code in any proceeding pending before it under section 4 or 24, notwithstanding the fact that such addition, or striking out of parties is to be made after the date specified in section 4 or 24, as the case may be, has elapsed.]

[3][CHAPTER IIA.

REGISTRATION OF AWARDS.

Debt Adjustment Register and Index.

46A. In all registration offices a book called "Register of Debt Adjustment Awards" and an Index relating thereto shall be kept. The book and index shall be kept in such form and shall contain such particulars as the [4][State] Government may prescribe.

Court to send awards and memorandums to Registrars and Sub-Registrars.

46B. [5][Where an award is required to be registered under section 38, it shall be the duty of the Court making the award to send to the sub-Registrar of the sub-district in which the property which is the subject matter of the award or any part of such property is situated, or if there is no Sub-Registrar for the area to the Registrar of the District in which the property or its part is situate a certified copy of the award after court-fee has been paid thereon in accordance with the provisions of section 44 together with a memorandum containing such particulars as the [4][State] Government may prescribe.

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[1] These words were substituted for the words "the amount of the award" by Bom. 70 of 1948, s. 16.
[2] This proviso was added by Bom. 37 of 1950, s. 9.
[3] Chapter IIA was inserted by Bom. 70 of 1948, s. 17.
[4] This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.
[5] This portion was substituted for the portion "It shall be the duty of the Court making an award" by Bom. 37 of 1950, s. 10.

Notice of appeals to Registrars.

[1][46C. If a party files an ap n award under section 43 and if such award has been registered under shall be the duty of the Court in which the appeal is filed to send to the or the Registrar to whom a certified copy of the award has been section 46B, a notice regarding the institution of the appeal.]

Registration.

46D. After the expiry of the period provided for an appeal against an award, if no appeal is filed, or if an appeal is filed after the disposal of the said appeal, the Sub-Registrar or the Registrar, as the case may be, shall register the award in the Register of Debt Adjustment Awards and shall also enter particulars in the Index kept under section 46A.

Registration of awards under repealed Act.

46E. All awards made under the repealed Act whether registered before the 27th day of May 1947 under the provisions of the said Act or not shall be registered under this Chapter :

Provided that notwithstanding anything contained in section 44 no additional court-fee shall be paid on such awards under the said section.

Notice of awards.

46F. Any person acquiring any property or any part of, or any share or interest in, the property of a debtor for adjustment of whose debts an award has been made [2][and registered] shall be deemed to have notice of the award as from the date the registration under this Chapter.

Application of Indian Registration Act.

46G. Except as herein provided, the provisions of the Indian Registration Act, 1908, shall *mutatis mutandis* apply to the registration of awards, and the words and expressions used in this Chapter but not defined in this Act shall have the meanings assigned to them in the Indian Registration Act, 1908.] XVI of 1908. XVI of 1908.

CHAPTER III.

INSOLVENCY PROCEEDINGS.

Court to declare debtor insolvent in certain circumstances.

47. (*1*) If at any stage of the proceedings under Chapter II the Court finds that the income of the debtor and his moveable property are not sufficient to allow his debts to be liquidated by annual instalments not exceeding twelve in number, the Court shall make an order adjudicating the debtor an insolvent.

[3][(*1A*) If at any time after the expiration of two years from the date of an award, the debtor satisfies the Court that there is no reasonable probability of his being in a position to pay the remaining amount of instalments fixed under the award, the Court may, notwithstanding anything contained in this Act, after giving notice to the creditor modify the terms of the award and reduce the amount of the instalment as it may think fit, provided that the total annual instalments in which the balance of the debts shall be paid in such instalments shall not exceed twenty or the Court may make an order adjudicating the debtor an insolvent.]

(*2*) After the debtor has been adjudicated an insolvent, the Court shall direct that such portion of the property of the debtor, liable to attachment and sale under section 60 of the Code of Civil Procedure, 1908, excluding such portion thereof as V of 1908.

[1] Section 46C was substituted for the original by Bom. 37 of 1950, s 11.
[2] These words were inserted, *ibid.*, s. 12.
[3] This sub-section was inserted by Bom. 41 of 1951, s. 3.

the [1][State] Government shall from time to time notify in the *Official Gazette* as the minimum necessary for the maintenance of the debtor and his dependents, as may be required to liquidate all the debts of the debtor, shall immediately be sold free of all incumbrances in liquidation of all debts outstanding against such debtor.

Procedure in insolvency proceedings.

48. The order of adjudication made [2][under sub-section (*1*) or (*1*A) of section 47] shall have the force of an order made by a competent court in the exercise of its powers under section 27 of the Provincial Insolvency Act, 1920.

V of 1920.

Distribution of assets of insolvent.

49. The proceeds realised by the sale of the property of the insolvent under section 47 shall be distributed in the order of priority specified in clause (*iii*) of sub-section (*2*) of section 32.

Bar to application in insolvency in other courts.

50. No application or proceeding in regard to the insolvency of a debtor shall lie in or shall be dealt with by any other Court.

Appeals barred.

[3][**51.** Save as provided by sub-clause (*vii*) of clause (*1*) of section 43, no appeal shall lie from any order passed under this Chapter.]

CHAPTER IV.

MISCELLANEOUS.

Bar of civil suits or proceedings.

[4][**51A.** Except as otherwise provided by this Act and notwithstanding anything contained in any other law, no Civil Court shall entertain or proceed with any suit or proceeding in respect of—

(*i*) any matter pending before the Court under this Act, or

(*ii*) the validity of any procedure or the legality of any award, order or decision of the Board established under section 4 of the repealed Act or of the Court, or

(*iii*) the recovery of any debt made payable under such award.]

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[1] This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.
[2] These words, brackets and figures were substituted for the words and figures "under section 47" by Bom. 41 of 1951, s. 4.
[3] This section was substituted for the original by Bom. 70 of 1948, s. 18.
[4] This section was inserted, *ibid*, s. 19.

Period of proceeding before Courts under this Act to be excluded.

52. In computing the period of limitation for the institution of any suit or proceeding in respect of any debt due from any person who is held not to be a debtor by the Court or the Court in appeal [1][or an application relating to which has been dismissed by the Court or the Court in appeal, the period during which the proceedings in respect of such debt were prosecuted before the Court or the Court in appeal shall be excluded.]

Alienation of standing crops, etc., before repayment of loan prohibited.

53. (*1*) No person, who is [2][or was] a party to any proceedings or award under this Act and who is indebted to a resource society or any person authorised to advance loans under section 78 of the repealed Act or section 54 of this Act on account of any loan advanced to him for the financing of crops under the repealed Act or seasonal finance under this Act, shall hypothecate or sell the standing crops or the produce of his land without the previous permission of the society or of the person, as the case may be, until such loan has been repaid in full.

(*2*) Any person who hypothecates or sells the standing crop or the produce of his land in contravention of sub-section (*1*), shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 500.

(*3*) No criminal Court shall take cognizance of any offence under this section except on the complaint in writing of the Court before which the proceedings were held or which made the award.

Power of [3][State] Government to authorise any person to advance loans to debtors.

54. (*1*) The [3][State] Government [4][or any officer empowered by it] may by notification in the *Official Gazette* authorise in any local area any person to advance loans to debtors who are parties to any proceedings under this Act or in respect of whose debts an adjustment has been made under this Act.

(*2*) Such authority shall be granted on such conditions as may be prescribed.

Rules.

55. (*1*) The [3][State] Government may by notification in the *Official Gazette* and subject to the condition of previous publication from time to time, make rules for carrying into effect the purposes of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing provision, such rules may be made for all or any of the following purposes, namely :—

(*a*) the purposes for which loans may be advanced under clause (*13*) of section 2 ;

(*b*) the form of application under sub-section (*2*) of section 4 and the manner of signing, verification and presentation thereof ;

(*c*) the form of application and the manner of signing and verification thereof under sub-section (*2*) and the manner of giving notice under sub-section (*3*) of section 8 ;

(*d*) the manner of giving notice and publication of general notice and the form of statement to be submitted under section 14 ;

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[1] This portion was substituted for the words " the period during which the proceedings were pending before the Court in respect of such debt shall be excluded " by Bom. 70 of 1948, s. 20.
[2] These words were inserted, *ibid.*, s. 21.
[3] This word was substituted for the word " Provincial " by the Adaptation of Laws Order, 1950.
[4] These words were inserted by Bom. 70 of 1948, s. 22.

(*e*) the inventories of property, lists of creditors and of debtors and of debts due to and from a debtor, the examination in respect of property or creditors, the time at which the debtors shall attend before the Court and do other things in relation to property under sub-section (*1*) of section 16, and the production of books of account, the examination to be submitted to, and the information to be supplied by a creditor in respect of the debt due to him by the debtor under sub-section (*2*) of section 16 ;

(*f*) the manner of determining the value of property and other assets under sub-section (*1*), and the manner of calculating the market value of the lands under sub-section (*4*), of section 29 ;

(*g*) the form of award under sub-section (*2*) of section 32 and sub-section (*2*) of section 33 ;

(*h*) the form of application under clause (*i*) of sub-section (*3*) of section 38 ;

(*i*) the manner in which property may be sold under section 41 ;

(*j*) the manner of recovery of Court-fees under sub-section (*2*) of section 44 ;

(*k*) the manner of service of notice under section 45 ;

[1][(*ka*) the form of and the particulars to be included in the Register of Debt Adjustment Awards and the Index kept under section 46A ;

(*kb*) the particulars to be included in the memorandum under section 46B ;]

(*l*) the conditions on which authority to grant loans shall be granted under sub-section (*2*) of section 54.

Repeal of Act XVII of 1879 and Bom. XXVIII of 1939.

56. (*1*) [2][Notwithstanding the repeal of the Dekkhan Agriculturists' Relief Act, 1879, by the Bombay Agricultural Debtors Relief Act, 1939, the first mentioned Act shall, in so far as it applies to transactions and proceedings to which this Act does not apply, be deemed to have been re-enacted with effect from the date of the coming into operation of this Act (hereinafter in this section referred to as the said date) and shall continue in force for a period of three years from the said date : XVII of 1879. Bom. XXVIII of 1939.

Provided that any proceeding in or out of any suit instituted before the expiry of the said three years shall be continued and disposed of after the expiry of the said period, as if the Dekkhan Agriculturists' Relief Act, 1879, had continued in force after the expiry of the said period :] XVII of 1879.

[3][Provided also that] nothing in this sub-section shall be deemed to affect, in regard to persons who are debtors and in respect of whose debts an application under section 4 of this Act can be made, anything done in the course of any proceeding pending in any Court on the said date and any such proceeding may be continued, in so far as the continuance is not inconsistent with the provisions of this Act :

Provided further that nothing in this sub-section shall in any way affect the transfer under section 19 of this Act of any suit or proceeding to which such debtor was a party.

(*2*) The Bombay Agricultural Debtors Relief Act. 1939, is repealed. Bom. XXVIII of 1939.

All Boards established under section 4 of the repealed Act shall be dissolved :

[1] Clauses (*ka*) and (*kb*) were inserted by Bom. 70 of 1948, s. 23.
[2] This portion was substituted for the original, *ibid.*, s. 24 (*1*) (*a*).
[3] These words were substituted for the words "Provided that", *ibid.*, s. 24 (*1*) (*b*).

[1][Provided that—

(*a*) all proceedings pending before any such Board at the date when this Act comes into force shall be continued and disposed of by the Court under this Act as if an application under section 4 had been made to the Court in respect therefor;

(*b*) all awards made, confirmed or modified under the repealed Act shall be deemed to have been made, confirmed or modified under this Act as if this Act was in force at the date when the said awards were made, confirmed or modified, as the case may be;

(*c*) all appeals pending before any Court under the repealed Act against the decision, order or award of such Board shall be continued and disposed of as if the said appeals were filed under the provisions of this Act; and

(*d*) all appeals which could have been filed under the repealed Act against any decision, order or award of such Board but which could not be filed only by reason of the fact that the said Act was repealed by this Act shall when filed before a competent court be deemed to have been filed under the provisions of this Act and shall be disposed of accordingly.]

Bom. IV of 1950.

[2][57. (*1*) Notwithstanding anything contained in section 4 of this Act as amended by the provisions of the Bombay Merged States (Laws) Act, 1950, in its application to the merged territories—

[4][Special provision for application under section 4 in respect of debts due to creditor in merged territory.]

(*a*) if any debtor was owing debts to a creditor in a merged territory on the date on which such territory merged with the [3][State] of Bombay and if the place in which such debtor was ordinarily residing on the said date was outside such territory, such debtor, or

(*b*) his creditor

may make an application to the Court under section 4 within six months from the date of the coming into operation of the Bombay Agricultural Debtors Relief (Amendment) Act, 1950.

Bom. XXXVII of 1950.

(*2*) Nothing in sub-section (*1*) shall entitle any debtor or creditor to make an application if prior to the date of the coming into operation of the said Bombay Agricultural Debtors Relief (Amendment) Act, 1950, he could have made an application under section 4 of this Act:

Bom. XXXVII of 1950.

Provided that, if the debtor had in such territory on the date on which such territory merged with the [3][State] of Bombay any property against which the creditor could have enforced his remedy for the recovery of the debts due to him from such debtor under any law in force in such territory immediately before the said date, such debtor or his creditor shall be entitled to make an application under sub-section (*1*).

Bom. IV of 1950.

58. Notwithstanding anything contained in section 24 of this Act as amended by the Bombay Merged States (Laws) Act, 1950, in its application to the merged territories, an agricultural labourer entitled to apply under section 24 for a declaration that a transfer of any land situate in any of the merged territories is a mortgage, may make an application under the said section within six months from the date of the coming into operation of the Bombay Agricultural Debtors Relief (Amendment) Act, 1950, to the Court of the Civil Judge (Senior Division) having ordinary jurisdiction in the area in which such land is situate, and if there is no such Civil Judge to the Court of the Civil Judge (Junior Division) having jurisdiction in the said area.]

Bom. XXXVII of 1950.

Special provision for application under section 24 in respect of land situate in merged territories.

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[1] This proviso was substituted for the original by Bom. 70 of 1948, s. 24 (*2*).
[2] Sections 57 and 58 were added by Bom. 37 of 1950, s. 13.
[3] This word was substituted for the word "Province" by the Adaptation of Laws Order, 1950.
[4] This marginal note was substituted for the original by Bom. 18 of 1953, s. 3 and Second Schedule.